Indigenous power beyond human rights

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Indigenous power in international law has long been subsumed under the language of international human rights, and we have turned ourselves blind to other possibilities in international law that Indigenous peoples can rely upon. One such option is international environmental law, which has seldom received sustained scholarly attention. In her new book, Federica Cittadino "argues that a correct interpretation / implementation of the international framework on the protection of biodiversity must duly take into account the rights of indigenous peoples." (p. 2) She takes a decidedly anthropocentric turn in biodiversity protection as a global public good, which is well in line with the links between environmental protection and human rights (a central part of the argument), not to mention with the book's ultimate goal, enhancing Indigenous self-determination through environmental regimes.

Indigenous peoples and environmentalists have long been allies, drawing on a view of Indigenous peoples' identity and their special relationship to land and the world as being necessarily mindful of the environment. That connection is not without its unintended consequences: as Karen Engle has shown, to imagine indigeneity as necessarily bounded to a harmonious relationship with nature can pigeonhole and stunt Indigenous development, particularly when other segments of the population are not subject to the same sustainability requirements to pursue their own development project. It is not to say that sustainable development obligations do not apply to everyone; the difference rather is one of where the requirement applies: for Indigenous peoples, sustainability is a precondition for their rights, whereas elsewhere sustainability is a limitation on rights.

Despite these possible unintended consequences, Cittadino engages with biodiversity protection as a means to not only ground Indigenous rights, but also to advance them in more effective ways through international human rights law. For Cittadino's purposes, international law is embodied primarily in the 2007 United Nations Declaration on the Rights of Indigenous Peoples, but regionally there is also the 2016 American Declaration on the Rights of Indigenous Peoples (which is unfortunately not engaged in the book). She buys into (and openly describes) the idea of Indigenous peoples' rights being founded upon a connection to nature – and primarily land. The international legal environmental regime, also grounded on territory, seamlessly becomes engaged in her argument.

First, the book helpfully describes the state of the art of Indigenous peoples' protection in international human rights adjudication, with prominence given to the pioneering jurisprudence of the Inter-American Court of Human Rights. Cittadino suggests that, even though much of the jurisprudence is grounded on culture, land is also a key component of the case law, and ultimately land is the

lynchpin of Indigenous peoples' rights in international law, as a means of pursuing self#determination.

I tend to subscribe to the view that self-determination has largely been abandoned in the Indigenous context, at least in its thick, statehood-inducing form. What is left of self-determination, in my view, is largely translated as cultural accommodation. However, self-determination's central positioning plays an important role in Cittadino's argument. Specifically, self-determination untangles Indigenous rights from land and gives these rights a broader, more emancipatory, set of possibilities. Sceptical as I remain about the feasibility of relying on self-determination, and the dark sides of our reliance on it (it may, after all, blind us to other strategic possibilities that are not already foreclosed), Cittadino makes a cogent case.

Cittadino uses the concept of self-determination to develop an interpretive approach to all international law that affects Indigenous peoples. International law is to be interpreted, applied, and implemented in the way that best serves Indigenous self-determination. The interpretation goes beyond rights instruments, and encompasses international environmental agreements, chiefly the Convention on Biological Diversity, and the Nagoya Protocol on Access and Benefit-Sharing under it.

These two interlocking regimes are discussed in the context of "access and benefit-sharing", a formula usually uttered in one breath, but that Cittadino insightfully analyses in its constitutive elements. Crucially, she demonstrates how these regimes can more clearly articulate Indigenous rights that are only declared in very broad terms in relevant international law, thereby advancing the state of Indigenous rights in international law.

Cittadino then moves on to examine the matter of protected conservation areas as a second case study on how international environmental regimes can advance Indigenous rights. Specifically for the purposes of this review, she focuses on the 1972 World Heritage Convention and its categories of natural heritage and cultural landscapes (broadly defined as natural areas impacted by human activity). She shows how this instrument has, over time, attempted to more openly engage the wishes of the communities living in, with, and around heritage, and how her interpretive framework can assist in engaging Indigenous communities specifically in the management of World Heritage sites that often exclude human interaction in the name of an ideal of pristine preservation.

I have argued elsewhere that international heritage law in its design and implementation tends to overwhelmingly exclude communities from having a say over the management of their own heritage in international law. Cittadino is more hopeful, at least with respect to the World Heritage Convention, and her reasoning also draws on the artificiality of the distinction between tangible and intangible heritage, meaning that all heritage exists not because of its own intrinsic values, but because of the way people interact with and safeguard said heritage, including Indigenous communities.

Therefore, heritage only matters because people are central to it, and international legal regimes (should) reflect that. However, her contagious optimism overlooks the

stage management role played by regimes and stakeholders that do not necessarily have Indigenous peoples' rights and interests at heart. The rules of the game are not meant to highlight the subaltern (in this case, Indigenous peoples) and their voice. Their voices, when presented, are always mediated, filtered through categories that may or may not fit their aspirations, but that were at any rate not designed by Indigenous peoples. In this process of mediation and translation, agency and its emancipatory promises are diluted.

In other words, while Cittadino's argument is important in imagining what international law can be, it also glosses over the tension between state interests and sovereignty which couch many of these regimes, and Indigenous peoples' rights, whose interests are not always in line with states. She acknowledges those tensions but does not go as far as working through their impacts on the picture she paints so capably.

The book's key contribution, however, still holds unabated in my view, and is a message that should be heeded far and wide: regimes other than international human rights law hold great and untapped potential for advancing goals we as international lawyers tend to associate only with international law. Whether we are talking about environmental, heritage, or myriad other regimes, we do not need to always fall into the all-too-tempting trope of turning to international human rights to promote emancipation. International human rights law pervades other areas of international law just enough to give us a hook to use other normative frameworks to promote human rights goals, in underutilized and often more sophisticated ways.

Cittadino's book makes an important contribution to a number of conversations, and deserves close attention, critical engagement, and replication in other contexts. We can and should do more with international law if we think beyond silos, and, while reality checks are useful, there is also plenty of room for ambitiously utopian and sophisticated projects like this book's.

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